

PROCEDURE

DISPUTE RESOLUTION

CAM 3.7.6

DATE: 7/10/00

A. PURPOSE:

Sometimes the State and a contractor cannot agree to an effective resolution of problems arising during contract performance. Because protracted disputes are disruptive and expensive, the buyer should seek to resolve conflicts quickly and fairly. When discussion and negotiation fail to reach the satisfactory resolution, the buyer shall follow the procedures below to resolve contract disputes.

B. DEFINITIONS:

Contract Disputes – Conflict or controversy; a conflict of claims or rights; and assertion of a right, claim for demand on one side which may be meant by contrary claims or allegations on the other.

C. PROCEDURE:

1. If there is a conflict or disagreement affecting an acquisition, document the major issues.
 - a. Talk to all principles involved in the controversy. It is important that the buyer or person administering the contract is involved in all discussions between State program and contractor personnel. At a minimum, all conversations should be fully documented with copies to the buyer.
 - b. Make a written summary of the major points.
2. Attempt to reach agreement that is acceptable to all parties. This may require escalating it up the State/contractor management structure. A review of the Dispute clause in the contract is recommended before taking any action. It is also helpful to consult legal counsel before taking action against a contractor.
3. If agreement can be achieved, then decide if the contract needs to be amended in accordance with CAM 3.7.2, Contract Changes. It is important that any agreement that merely clarifies its existing requirements be documented. Otherwise if a change is required to make the contract conform to the intent of the parties, it must be processed promptly.

NOTE: Pending the final dispute resolution, the contractor must continue to perform the contracted work. Failure to proceed constitutes a material breach of contract.

4. Ascertain the dispute's origin — Contractor or the State. Once the State agency/contractor management has attempted to resolve the disputes unsuccessfully, if the contractor is not satisfied, the contractor must submit a written demand for final decision to the agency director or designee.
 - a. The written demand must be factually supported.
 - b. A senior company official must sign any request for cost adjustment to certify that:
 - I. The demand is made in good faith,

- II. The supporting data are accurate and complete, and
- III. The amount requested accurately reflects the contract adjustment for which the contractor believes that the State is liable.

NOTE: If the Procurement Division (PD) is the agency that issued the contract, the demand for a final decision is the last administrative remedy available to a contractor. If the contract was issued by another agency, the demand is sent to that agency head, but if the contractor is not satisfied with the response, the decision may be appealed to the Deputy Director, PD. If the other agency is an agency of the Department of General Services (DGS), the final decision will be made by the Director, DGS.

- 5. The Deputy Director will sign decisions on appeal. The State's final decision is conclusive and binding unless the contractor commences a lawsuit within the latter of the following periods:
 - a. Ninety (90) days following the date of the final decision; or
 - b. One (1) year following the accrual of the cause of action.

D. RESPONSIBILITIES:

- 1. The designated buyer is responsible for managing State contract performance requirements. The buyer must be constantly alert to performance problems having the potential to disrupt the efficient completion of the contract within the imposed terms and conditions, and take immediate action, including escalating the problem to management for resolution. The buyer immediately analyzes, verifies, and documents contract performance problems.
- 2. The buyer maintains open and effective communication with the contractor and resolves performance problems in a fair and objective manner.
- 3. The buyer promptly provides the contractor written notice of specific performance problems and should allow the contractor adequate time to prepare and submit a response. Also see CAM 3.7.7, Contract Terminations, for specific requirements of notices.

E. APPENDICES: None

F. AUTHORITY REFERENCES:

- 1. Statutory: None
- 2. Administrative: None
- 3. Procedural:

[CAM 3.7.2, Contract Changes](#)

CAM 3.7.7, Contract Terminations

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